IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Assigned On Briefs October 8, 2008

# MAURICE EDWARD HUGHLEY v. STATE OF TENNESSEE, ET AL.

**Appeal from the Chancery Court for Davidson County**
**No. 03-2074-III Ellen H. Lyle, Chancellor**

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**No. M2007-02857-COA-R3-CV - Filed July 30, 2009**

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A former inmate filed for a declaratory order challenging the Department of Correction's ("Department") calculation of his expired sentence. The trial court granted the Department summary judgment finding that the petitioner inmate failed to sufficiently rebut the affidavit filed by the Department explaining in detail the calculation of his sentence. We affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed**

PATRICIA J. COTTRELL, P.J.,M.S., delivered the opinion of the court, in which FRANK G. CLEMENT, JR. and RICHARD H. DINKINS, JJ., joined.

Maurice Edward Hughley, Lexington, Kentucky, Pro Se.

Robert E. Cooper, Jr., Attorney General and Reporter, Arthur Crownover II, Senior Counsel, for the appellees, State of Tennessee and Candace Whisman.

## MEMORANDUM OPINION[1]

Maurice Hughley, a former Tennessee inmate, appeals the denial by the Department of Corrections ("Department") of his request to revise his sentence calculation. Mr. Hughley is currently incarcerated in a federal prison in Kentucky. Mr. Hughley petitioned the Department for a declaratory order regarding his sentence calculation. By letter dated February 5, 2003, the

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[1] Tenn. R. Ct. App. 10 states:

> This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

Department denied his request for a declaratory order finding that his sentence dates and credits were correct.

In July of 2003, Mr. Hughley filed this suit for a declaratory judgment under the Uniform Administration Procedures Act, Tenn. Code Ann. § 4-5-225 ("Act"), asking the court to declare that his sentence expired "about 1986, or 1985, if not sooner."[2] On November 25, 2003, the trial court dismissed Mr. Hughley's petition since the petition was not filed within 60 days of the Department's letter pursuant to Tenn. Code Ann. § 4-5-322(b)(1). Mr. Hughley appealed to the Court of Appeals which affirmed the dismissal. The Supreme Court, however, in *Hughley v. Tennessee*, 208 S.W.3d 388, 395 (Tenn. 2006), reversed the dismissal finding that when the agency issues a letter of denial without a contested case hearing, the petitioner has 10 years to file a suit for declaratory judgment. Consequently, the matter was remanded to the trial court for further proceedings.

On remand, the petitioner filed a second motion to amend and motions to compel discovery in January of 2007.[3] The trial court denied the discovery motions but granted Mr. Hughley's motion to amend his petition for the second time on March 30, 2007, adding allegations of constitutional violations and a request for compensatory damages.

In April of 2007, defendant then moved for summary judgment arguing that the undisputed facts show his sentence was correctly calculated and that damages were unavailable under the Act. In support of the motion, the defendant provided the affidavit of the Department's Director of Sentence Management Services certifying the accuracy of the information contained in the Department records about Mr. Hughley's sentences and providing a detailed calculation of his sentence. Mr. Hughley's state sentence expired on March 5, 1996.

On May 23, 2007, Mr. Hughley filed a third motion to amend his petition and to compel discovery.

Mr. Hughley's response to the motion for summary judgment was to request more time based on his motion to compel discovery and third motion to amend. The trial court denied Mr. Hughley's third motion to amend and motion to compel. The trial court found the defendant had previously provided all discoverable information so delay was not warranted on that basis. Finding that Mr. Hughley has failed to create any genuine issue of material fact, the trial court granted the defendant's motion for summary judgment on July 16, 2007. Mr. Hughley then filed this appeal.

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[2] The trial court granted Mr. Hughley's motion to amend naming the department as respondent in addition to a Department employee who had been named originally.

[3] Upon order of this court, the trial court clerk's office supplemented the record on May 15, 2009 providing, among other things, copies of Mr. Hughley's motion to amend and to compel discovery that had been filed in January of 2007.

## I. Summary of Judgment Standard of Review

A trial court's decision on a motion for summary judgment enjoys no presumption of correctness on appeal. *Martin v. Norfolk Southern Railway Co.*, 271 S.W.3d 76, 84 (Tenn. 2008); *Blair v. West Town Mall*, 130 S.W.3d 761, 763 (Tenn. 2004). We review the summary judgment decision as a question of law. *Id.* Accordingly, this court must review the record *de novo* and make a fresh determination of whether the requirements of Tenn. R. Civ. P. 56 have been met. *Eadie v. Complete Co.*, *Inc*., 142 S.W.3d 288, 291 (Tenn. 2004); *Blair v. West Town Mall*, 130 S.W.3d 761, 763 (Tenn. 2004).

The moving party has the burden of demonstrating it is entitled to judgment as a matter of law and that there are no material facts in dispute. *Martin*, 271 S.W.3d at 83. To be entitled to summary judgment, a defendant moving party must either (1) affirmatively negate an essential element of the non-moving party's claim or (2) show that the nonmoving party cannot prove an essential element of the claim at trial. *Hannan v. Alltel Publishing Co.*, 270 S.W.3d 1,9 (Tenn. 2008). If the party seeking summary judgment makes a properly supported motion, the burden shifts to the nonmoving party to set forth specific facts establishing the existence of a genuine issue of material fact. *Martin*, 271 S.W.3d at 84; *Hannan*, 270 S.W.3d at 5; *Staples v. CBL & Associates*, 15 S.W.3d 83, 86 (Tenn. 2000) (citing *Byrd v. Hall*, 847 S.W.2d at 215).

## II. Analysis

The Department has the statutory responsibility for calculating each prisoner's release eligibility date. Tenn. Code Ann. § 40-28-129. The trial court found the Director's affidavit establishing the sentence calculation was "a detailed calculation of plaintiff's sentence which is reasonable and makes sense on its face and is supported by copies of the criminal court convictions." Consequently, the trial court found Mr. Hughley must create a genuine issue of material fact to avoid summary judgment. Since Mr. Hughly failed to do so, the trial court granted summary judgment against Mr. Hughley.

Mr. Hughley is proceeding *pro se* and it is not a simple matter to decipher the points he is attempting to make. Mr. Hughley first appears to argue that the credits to his sentence were miscalculated because his credits should have been calculated under the statutory scheme that existed when he was sentenced but was later repealed. Tenn. Code Ann. § 41-21-236(g) provides as follows:

> (g) The department is authorized to continue the application of the previously enacted sentence credit systems formerly codified in §§ 41-21-212 [repealed], 41-21-213 [repealed], 41-21-214 [repealed], 41-21-215 [repealed], 41-21-228 [repealed], 41-21-229 [repealed], 41-21-230 [repealed], 41-21-231 [repealed], 41-21-232 [repealed], and 41-21-233 [repealed], to any inmates to whom they currently apply and who do not sign written waivers as provided in subsection (c). Any sentence credits earned or awarded under previously enacted systems shall continue to remain in full force

> and effect unless and until they are taken away in accordance with the procedures established by the previously enacted systems.

Tenn. Code Ann. § 41-21-236(c) provides as follows:

> (c)(1) Any provision of title 40, chapter 35 to the contrary notwithstanding, persons convicted under that chapter may be awarded sentence reduction credits as set forth in this section.
> (2) Any provision of titles 39 and 40 to the contrary notwithstanding, all persons who commit Class X felonies on or after December 11, 1985, shall be eligible for the sentence reduction credits authorized by this section.
> (3) Any person who committed a felony, including any Class X felony, prior to December 11, 1985, may become eligible for the sentence reduction credits authorized by this section by signing a waiver, in writing, of the right to serve the sentence under the law in effect at the time the crime was committed. However, sentence reduction credits authorized by this section may be awarded only for conduct or performance from and after the date a person becomes eligible under this subsection (c).

Mr. Hughley was convicted in 1983 so subsection (c)(3) is applicable. According to the affidavit submitted by the Department, however, on February 26, 1987, Mr. Hughley executed the waiver described above waiving his right to credits under the law in effect when the crime was committed so his credits were to be calculated pursuant to Tenn. Code Ann. § 41-21-236. Mr. Hughley fails to point out on appeal any evidence before the trial court wherein he created a factual dispute about the existence of such a waiver.

Mr. Hughley also appears to contest the department's recalculation after entry of a corrected order. The original sentence of seven (7) to fifteen (15) years was corrected by a Knox County order dated January 5, 1987. Under the January 1987 order, one (1) count was corrected to run consecutively and not concurrently. As a consequence, the sentence was revised to eight (8) to seventeen (17) years. This recalculation is noted in the affidavit provided by the Department together with the Knox County Order reflecting the correction. If Mr. Hughley has an objection to the corrected Knox County Order, his avenue is not to challenge the Department's calculation based on the order, but the order itself.

Finally, Mr. Hughley also argues that the trial court erred by denying his motion to amend for the third time and by denying his motion to compel discovery.[4] Upon review of these motions, we agree with the trial court that the motions were futile and have no effect on the merits of defendant's summary judgment request.

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[4] Mr. Hughley also argues that the trial court erred by failing to grant a default judgment. This was not error for several reasons including the fact that Mr. Hughley filed his motion for default after the trial court had granted summary judgment.

We agree that Mr. Hughley failed to effectively contradict the Department's affidavit or otherwise create a genuine issue of fact. For example, Mr. Hughley's third motion to amend his petition filed on May 23, 2007 was filed in the form of Mr. Hughley's affidavit. It, however, contains broad, conclusory statements and fails to create issues of fact with the detailed sentence calculation provided in the affidavit provided by the Department. Consequently, the trial court is affirmed.

The trial court is affirmed and costs of this appeal are taxed to Maurice Hughley for which execution may issue if necessary.

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PATRICIA J. COTTRELL, P.J., M.S.